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THE PERSONAL LIABILITY OF MEMBERS OF VOLUNTARY ASSOCIATION.

When the result of the presidential election of 1840, the triumph of "Tippecanœ and Tyler Too," became known there was much rejoicing in Pittsburgh and Allegheny. During the progress of that emotional campaign, the Whigs had used the public house of John Irons for meetings and rendezvous, to the grievous deterioration of his carpets and furniture. At a large and enthusiastic meeting—what would now be called a ratification meeting—of supporters of the victorious ticket it was proposed, with a view to compensating Mr. Irons, that a great free dinner should be gotten up, the expense to be defrayed by voluntary subscriptions. The dinner was to be prepared by Mr. Irons. The occasion was to be his "benefit." A committee of the suggestive number of thirteen was appointed to arrange the details, and another similar one to invite the guests. William Eichbaum, John D. Davis, William Black and William D. Darlington were members of one or the other of these committees. Together on the following

day they met "a concourse of people of the same political stamp," who organized as an original meeting, with Mr. Eichbaum in the chair, and again went over the whole project. Mr. Eichbaum and Mr. Davis, possibly with a presentiment of what was in store for them, opposed it by argument and vote, but eventually yielded to the majority resolved upon a free dinner. At the conclusion of the meeting Mr. Irons was called before the committees and in the presence of and without dissent from the gentlemen named was directed to prepare a dinner for 1000 persons and serve it at Taaffe's warehouse. Then the work of collecting subscriptions was taken in hand by another committee appointed at the last meeting. As the days fled by the partisan character of the enterprise vanished in universal good feeling and pleasurable anticipation. Its popularity so grew that at the time and place appointed for the dinner 4000 people of all political parties "partook of it with wonderful cordiality." In the meanwhile the response to requests for subscriptions seems not to have been nearly so spirited as the response to the invitations to dine free of charge. The outcome was a deficit likely to turn John Irons's intended benefit into a woful disaster. But John Irons—*nomen, omen*—was not made of the stuff to submit without a struggle. He promptly sued William Eichbaum and the other gentlemen named in assumpsit and recovered. On writ of error the Supreme Court, Chief Justice Gibson delivering its opinion, affirmed the judgment against them.[1] The plaintiffs in error contended that they were acting as agents of the meeting that had determined upon the dinner and appointed the committees, and that upon that meeting as their principal rested the responsibility for John Irons's demand. But it was considered that they had no principal, because there was back of them no definite organization formed for continued existence—merely an ephemeral gathering whose constituency at its adjournment was "lost in the crowd,"

[1] *Eichbaum* v. *Irons*, 6 W. & S. 67.

and that there was no such thing as "responsibility of a populace." The law of partnership was declared to have nothing to do with the case. The decision was predicated upon the existence of a direct contract between the plaintiffs and defendant in error, the former being present and acquiescing when the latter was given the order. If Messrs. Eichbaum *et al.* failed to accept the issue "with good opinion of the law," they at least had the comfort of being able to trace it to a tangible, external and undeniable fact made decisive by the operation of a principle in its statement and application simplicity itself.

In most cases, where a liability is attempted to be fixed upon members of a committee, a club, or any voluntary associations by reason of the act, contract or expenditures of some of them, or of their chosen officers, the question does not admit of so plainly intelligible a solution. And though a good deal has been adjudicated on this subject and the practical outcome of the decisions seems in the main to be fairly consistent, there has been such a measure of divergence in the reasoning by which they were reached that pretty much every new case reopens the controversy along the whole line. As lately as *Pain* v *Sample*,[2] the Supreme Court of Pennsylvania was called upon to discuss the question whether members of a committee of a voluntary beneficial association, having in charge a series of entertainments for its benefit, were liable as partners upon a contract made for the purpose stated. Like inquiries are being continually pressed upon the *nisi prius* courts. For the most part they arise between members of committees, associations, etc., on the one side and outsiders. But every now and then they arise among the members themselves, some of them asserting a right of contribution, accounting, etc., against the remainder. It is a familiar rule that one may hold others as though they were partners who are not in fact partners, if he can show that they held themselves out to him and he

[2] 158 Pa. 428.

dealt with them as such.[3] But when it comes to one man's holding another as his partner, it must be remembered that a partnership is founded in the voluntary contract of the parties as distinguished from a mere community of interest which by operation of law may arise in various ways.[4] In other words, the partnership relation is one resulting from agreement, express or implied,—from the act and intent of the part es, not from operation of law contrary to their intent.[5] Of course that imposes upon him who asserts the existence of that relation between himself and another the burden of establishing it as a fact. Nor in so doing can he avail himself of circumstances which, as between outsiders and those whom he seeks to hold as partners with himself, might require them to be visited with liabilities incident to a partnership. No man can in his own name and for his own benefit set up rights of another that have not passed to him.[6]

One thing is clear,—that if persons associated together as a committee, or a club, or a voluntary association of any description, are *inter se* partners, they are liable as such to one another and also to outsiders. In *Thomas* v *Ellmaker* [7] Judge King lays down the rule, in substance, that a voluntary association for private or individual profit or pleasure, emolument or benevolence is a partnership, but that members of an association for objects of a public nature are not partners *inter se*, whatever may be their relation as regards outsiders. The first part of this proposition he bases upon the old English chancery rulings and the decision in *Babb* v *Reed*,[8] which he says was produced by the same principles, and which indeed professes to adopt them. But in a large measure those principles were long ago aban-

3 *Denithorne* v. *Hook*, 112 Pa. 240, 243.

4 *Hedge & Horn's App.*, 63 Pa. 270, 278.

5 Gibbs's Est., 157 Pa. 59, 70.

6 See *Sparhawk* v. *Ry. Co.*, 54 Pa. 401, 421; *Hill* v. *Mut. Protect. Co.*, 59, id. 474, 477; *Dalry* v. *Electric, etc., Co.*, 208 id. 403, 412.

7 Pars. Eq. (Pa.) 98.

8 5 R. 151.

doned in England. Within a year or so after the decision in *Babb* v *Reed* the case of *Flemyng* v *Hector*[9] was decided in the Court of Exchequer. It was held that the members of a social club were not as such liable for debts incurred by its management for work done or goods supplied for the use of the club. Lord Abinger, C. B., brushes aside the idea of such liability as arising on the theory of a partnership relation by distinguishing enterprises of the kind under consideration from trading associations, which he says "stand on a very different footing," and denies the power of any member or fraction of the membership in the former to pledge the personal credit of their fellows. Then in 1841 came the decision of the same court in *Todd* v *Emby*,[10] where the committee of a club had been sued for supplies furnished on the order of the steward, who from the evidence might be inferred to have been authorized by the committee or some of its members to order them. The claim that all the members of the committee were to be treated as partners, bound by the authority given by some of them to the steward, was again rejected as untenable, and the question declared to be one of the liability of each individual member on the ground of his specific assent to the contract. Finally, in *Re St. James' Club*,[11] the matter was set at rest by a sweeping declaration that the law, however uncertain in the past, was then settled that social clubs were not partnerships. Thus, so far as English authority for Judge King's proposition is concerned, except as it applies to associations for profit, there seems to have been little left of the ancient rule even at the time when *Thomas* v *Ellmaker* was decided, and practically nothing a few years thereafter. Nor do the recent American cases give it any greater support, though there is a perplexing echo of it here and there.

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[9] 2 M. & W. 172.

[10] 8 M. & W. 504.

[11] 2 DeG., M. & G. 383.

Christy's App.,[12] like *Hess* v *Merts*,[13] was the case of a banking association; *Witmer* v. *Schlatter*[14] of a transportation company; *Hedge & Horn's Appeal*[15] of an oil company; *Rhoads* v. *Fitzpatrick*,[16] of an association for dealing in coal; *Davidson* v *Holden*[17] of a co-operative meat market,—all of them essentially business, trading, commercial adventures. In such the elements of a partnership and the intent to create the partnership relation may perhaps be implied from the nature of the enterprise and the exigencies ordinarily incident to its operation. Whatever may have been the ancient usage of the terms co-partnership and co-ownership as virtually synonymous,[18] it is now too well settled to justify discussion that mere co-ownership of property does not constitute co-partnership. Yet there is much good sense in the suggestion of the editors' note in 15 Pepper & Lewis's Digest,[19] that co-proprietorship in business may furnish evidence of an intent to assume the partnership relation which even an express stipulation to the contrary could not override. In a legal sense the decisive "intent" is always to be sought, not in the purpose of the actor undisclosed or, it may be added, formally protested,[20] but in his purpose reasonably implied and manifested by his outward and visible act.[21] The distinction above indicated between business and other associations is emphasized in *McMahon* v *Rauhr*,[22] where a voluntary association for "innocent pleasure, and not trade, business adventure or profit" is held "not strictly a co-partnership;"

[12] 92 Pa. 157.
[13] 4 S. & R. 356.
[14] 2 R. 359.
[15] 63 Pa. 273.
[16] 166 Pa. 294.
[17] 55 Conn. 103.
[18] See 1 Lindley, Part. p.*2.
[19] Col. 25711.
[20] See *Brunswick, etc., Co.* v. *Hoover*, 95 Pa. 508, 513; *Ash* v. *Guie* 97 id. 493, 499.
[21] See *Bank* v. *North*, 160 Pa. 303, 308.
[22] 47 N. G. 67.

though it is added that the rights of the associates in the property and the modes of enforcing them are not materially different from those of partners in the partnership property,—citing Lord Eldon's decision in the old leading case of *Beaumont* v *Meredith*.[23] In the later case of *Lafond* v *Deems*,[24] however, it is squarely ruled that an association not for business, trade or profit, but for the benefit and protection of its members, is "certainly not a partnership." Similarly in *Ash* v *Guie* [25] a Masonic lodge, unincorporated, whose purposes were social, benevolent and charitable within its membership, was held not to constitute a partnership. The same conclusion was reached in *Pain* v *Sample* [26] concerning a G. A. R. post and a committee appointed by it to manage a series of entertainments for its benefit, and in *Burt* v *Lathrop*,[27] with reference to an association of persons for the purpose of legal resistance to the claims of a patentee. From these decisions it is possible, of course, to differentiate those denying the partnership character to associations of a quasi-public nature in *Thomas* v *Ellmaker* [28] (a fire company), *Volger* v *Ray* [29] ("New England Pigeon and Bantam Society"), *Devoss* v *Gray* [30] (a religious association), *McCabe* v *Goodfellow* [31] (a "Law and Order League"), and kindred cases. But aside from these, the weight of authority surely inclines to the view that in associations not for trade or commerce the existence of public objects, as distinguished from objects of benevolence, socialibility, pleasure, improvement or protection confined to the membership, is not indispensable to forbid the application of doctrines peculiar to the

[23] 3 Ves. & Beames 180.
[24] 81 N. Y. 507.
[25] 97 Pa. 493.
[26] 158 Pa. 428.
[27] 52 Mich. 106.
[28] 1 Pars. Eq. (Pa.) 98.
[29] 131 Mass. 439.
[30] 22 Ohio St. 159.
[31] 133 N. Y. 89.

law of partnership. To that extent, at any rate, the ancient rule must be deemed to be modified by the modern one; the latter being understood as conceding partnership attributes, if at all, only to business associations. In such, where regarded as partnerships, the problem of the liability of members *inter se* and to outsiders present no questions which do not find their adequate solution in the general principles of partnership. In associations which are not partnerships those questions must obviously be approached upon different lines. As to them the rule laid down by the Lord Chancellor in *Re St. James's Club*[32] is fundamental; viz., that "no member . . . is liable . . . except so far as he has assented to the contract in respect of which such liability has arisen,"—that rule determining his liability or non-liability both to his fellows and to outsiders in the absence of special and necessarily exceptional circumstances.

The effect of this rule is manifest. Whenever a member not directly participating in the making of the contract is to be visited with responsibility for a debt or an expenditure incurred beyond the resources of the association by its managers or by a fraction of its membership in its behalf, the question is one of agency on the part of those incurring the debt or expenditure. This agency, however, is a very different thing from that which is said to exist in every member of a partnership because of the partnership relation. The Civil law sees in a partnership an artificial personality, a juristic entity apart from its constituent members.[33] Our law has come to the same conception of it.[34] Upon that doctrine, indeed, hangs the rule devoting firm assets primarily to firm liabilities[35] as well as a lot of other more or less familiar propositions.[36] It is no less essen-

[32] 2 DeG., M. & G. 383, at p. 387.

[33] Howe, Stud. in Rom. Law, pp. 159 et seqq.

[34] *Donnally* v. *Ryan*, 41 Pa. 301, 310; McNaughton's App., 101, id. 550, 554; *Boyd* v. *Cox*, 153 id. 78, 82.

[35] *Forsythe* v. *Woods*, 11 Wall. (U. S.), 484, 486.

[36] See *Smith* v. *McMicken*, 3 La. Ann. 319, 322.

tial to a comprehension of what is meant when it is said that every partner is clothed, with respect to the partnership affairs, with a general agency to bind his associates. In *Pooley* v *Driver*[37] Sir George Jessel, M. R., with his accustomed directness and lucidity shows that the notion of a partner's agency (a term whose use he deplores as confusing) cannot be understood without grasping the notion of the existence of the firm as an entity separate from that of the partners. "But," says he, "when you get that idea clearly, you will see at once what sort of agency it is. It is the one person acting on behalf of the firm. He does not act as agent, in the ordinary sense of the word, for the others so as to bind the others; he acts on behalf of the firm of which they are members; and as he binds the firm and acts on the part of the firm, he is properly treated as the agent of the firm. If you cannot grasp the notion of a separate entity of the firm, then you are reduced to this, that inasmuch as he acts partly for himself and partly for the others, to the extent that he acts for the others he must be an agent, and in that way you get him to be an agent for the other partners, but only in that way, because you insist upon ignoring the existence of the firm as a separate entity. That being so you do not help yourself in the slightest degree in arriving at a conclusion by stating that he must be an agent for the others. It is only stating in other words that he must be a partner, inasmuch as every partnership involves this kind of agency; or, if you state that he is agent for the others, you state that he is a partner." As said by Mr. Justice Williams in *Boyd* v *Thompson & Coxe*,[38] the firm is "necessarily represented by the natural persons who compose it." In short, the firm is an artificial entity represented by each member by virtue of his membership,—bound by the acts of those thus representing it,—and in turn imposing liability upon every member by reason of the obligation result-

[37] L. R. 5 Ch. Div. 458, at p. 476.

[38] Ubi supra.

ing to the firm from the act of its representative. That sort of representation may be and generally is termed an agency. But accurately speaking it is an agency, not for the individuals composing the firm, as natural persons, but an agency for the partnership as a quasi-juridical entity. Where there is no partnership there can be no talk of such an agency. The agency capable of affecting members of an association which is not a partnership must obviously be what Sir George Jessel calls an agency "in the ordinary sense of the word for the others so as to bind the others,"—a power to act for the particular individual intended to be held, resting in antecedent authorization or subsequent ratification brought home to that individual.

An antecedent authorization may be express, and in that event there is little room for trouble. Or it may be implied. Possibly the liability of members even of business associations would in all the cases in which it has been affirmed be more logically referred to an implied antecedent authorization than to any theory of partnership. *Davidson* v *Holden* [39] seems to be put upon that ground. So is *Sproat* v *Porter*,[40] where persons associated together for the purpose of obtaining a charter as a banking company were held impliedly to authorize expenditures, etc., needfully incurred therefor. But in associations which do not fall within any of these categories the implication cannot, as in those which do, arise from the nature, purposes and necessities of the enterprise. It was pointed out in *Flemyng* v *Hector*,[41] mentioned in *Ash* v *Guie*,[42] and emphasized in *McCabe* v *Goodfellow*,[43] that in associations of the kind there under discussion, as distinguished from business enterprises, the scheme of operations contemplates the defraying of all expenses out of funds provided by

[39] 55 Conn. 103.
[40] 9 Mass. 300.
[41] 2 M. & W. 172.
[42] 97 Pa. 493.
[43] 133 N. Y. 89.

subscriptions, dues, etc., and implies no authority in any one, member or officer, to pledge without limit the personal credit of the members. It goes without saying that this scheme may be modified by explicit provisions to the contrary or by the adoption of measures in themselves inconsistent with and therefore to that extent displacing it. But nothing of that sort being in the way, common experience and observation, which are the sources of legal presumptions,[44] make the rule stated broadly applicable to associations not for business, trade or commerce. It follows that as to such as a class it may be declared that no general implied authority exists in any individual member, in any fraction of the membership, in any officer or managing committee to bind the remaining members for debts incurred or for expenditures made on behalf of the association beyond the fund provided for its purposes by subscriptions, dues or other contemplated revenues. Lord Abinger in *Flemyng* v *Hector*,[45] very pertinently remarks that, if those in charge of the enterprise find that more money is required than has been provided, it is their business to call the association together and ask for further means.

The rule stated has an important bearing also upon the question of subsequent ratification, which again may he express or implied. If the presumed understanding on all hands is that the association is to be managed within the funds provided and that there is no implied power to exceed them, every member has a right to believe that it is being so managed until he is apprized of the contrary.[45a] When therefore it becomes a question whether this or that act or omission on the part of a given member is to be treated as an implied ratification of expenditures, etc., beyond the available resources, the principle that there can be no inference of

[44] *Iron Co.* v. *Tomb*, 48 Pa. 387, 391; *Kissick* v. *Hunter*, 184 id. 174, 179.

[45] 2 M. & W. 172, at p. 183.

[45a] A party is entitled to act upon the presumption that another is performing his duty: *Bard* v. *Ry. Co.*, 199 Pa. 94, 98.

ratification where the act set up as constituting it was done in excusable ignorance of material facts [46] is one to be seriously reckoned with.

A few of the decisions pointing out the liability of members of associations not of the business type may be referred to as illustrating the application of the doctrine of implied agency and ratification.

Ridgely v *Dobson* [47] was an action brought against certain members of a literary society to recover for books furnished to it. The cause was tried as between plaintiff and one only of the defendants, the others not having been served or having suffered judgment by default. There was evidence that defendant was a member of the society and secretary of the committee that had authorized the purchase by one of its members. It was held that if the jury so believed a verdict against him would be justified on the ground that members of such an association are liable for goods supplied to it on the order of its agent with their concurrence and approbation.

Very similar is *Heath* v *Goslin*.[48] At a public meeting called in the interest of a movement towards establishing a Normal School a committee was appointed to set the project on foot and assume complete management. Subscriptions were procured as a sort of guaranty fund. The committee proceeded to organize the school and managed it for some years. During this time the committee authorized its chairman to employ plaintiff as teacher at an annual salary, and the latter, being unpaid for part of the time, sued the members of the committee. It was held that they were liable. The argument unsuccessfully advanced in *Eichbaum* v *Irons*, that the committee was acting only as agent for the public meeting at which it was appointed, and which was therefore its principal and responsible for its contracts, was rejected on substantially the same ground

[46] *Tanney* v. *Tanney*, 159 Pa. 277.
[47] 3 W. & S. 118.
[48] 80 Mo. 310.

as in that case. The subscribers on the other hand were declared to be liable only for the amounts subscribed by them.

In *Ash* v *Guie* [49] the decision was in favor of the defendants; but Mr. Justice Trunkey [50] points out the conditions under which, if shown by the proofs, it would upon a retrial have to be otherwise. Says he: "The proof fails to show that the officers or a committee, or any number of the members, had a right to contract debts . . . which would be valid against every member from the mere fact that he was a member. . . . But those who engaged in the enterprise [51] are liable for the debts they contracted, and all are included in such liability who assented to the undertaking, or subsequently ratified it. Those who participated in the erection of the building, by voting for and advising it, are bound the same as the committee who had it in charge. And so with reference to borrowing money. A member who subsequently approved the erection or borrowing could be held on the ground of ratification of the agent's acts." All this was quoted with approval in the later case of *Pain* v *Sample*,[52] where, moreover, the principle was applied that members of an entertainment committee appointed by the association are not liable to a suit as individuals when acting and understood as acting for the association intended to be bound and legally bound as their principal by the contract made. Besides, the case was held to be within the Act of 1876,[53] declaring that members of certain beneficial organizations shall not be individually liable for debts payable out of the treasury thereof.

Murray v *Walker* [54] is altogether in line with the rule

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[49] 97 Pa. 493.

[50] See p. 500.

[51] The erection of a Masonic Temple.

[52] 153 Pa. 428, at p. 432.

[53] Act. Apr. 28, 1876, P. L. 53.

[54] 83 Ia. 202.

stated in the above extract from Judge Trunkey's opinion. There was evidence to show that the defendant had subscribed and contributed towards the establishment of a fair association; that he had been its vice-president; that he had acted as judge at its races; that he had himself assisted in collecting money to pay debts incurred in its behalf. It was held that there was enough to warrant the jury in finding, not only that he was a member, but that he had ratified the incurring of debts for which he was sought to be held. It will be noticed that in this conclusion, as well as in the rule laid down in *Ash* v *Guie*, the element of knowledge of the fact that the funds provided were being exceeded was not absent. In the one case the nature of the undertaking in question would naturally suggest it. In the other the defendant indisputably knew that debts were being contracted by the society's management.

Possibly in this connection ought to be mentioned the decision already referred to in *Hedge & Horn's Appeal*.[55] The venture there involved was a business venture. It was started by obtaining subscriptions for "shares" at so and so much each, the total number being limited. The contest arose, in the form of a bill in equity, between subscribers. The prayers were for discovery of amounts paid in by each, of disbursements made and of liabilities incurred in behalf of the association,—for the appointment of a receiver,—for the settlement of accounts between the various subscribers, ——and for payment of the sums to be found due from them respectively. In short, the theory of the proceeding was that all those subscribing constituted a partnership. There had been a formal organization. But a number of the defendants had taken no part in it or in any of the subsequent doings. Of these the Supreme Court declared that they were not to be held as partners. "If the subscriber," says Agnew, J.,[56] "interpose and

[55] 63 Pa. 273.

[56] P. 278.

act as a member, or director, or attend meetings, or accept office, or otherwise give himself out as a member, he will make himself liable." This statement may be regarded as somewhat broad, though perhaps not quite as much so as the assertion in *Devoss* v *Gray*[57] that a member, in order to be held for debts incurred, must in some way have sanctioned or acquiesced in them. But the language was used in a case dealing with a business association and with reference to circumstances excluding liability even under so wide a definition. It was therefore quite precise enough for the purposes of the decision. The latter is, however, highly instructive in its adjudication of the exact status of persons who put their names to subscription papers as agreeing to contribute to enterprises launched in that way. The underlying principle, indeed, is old enough.[58] The subscription, though followed with payments, does not make the subscriber a member of anything. It is but the declaration of an intent to become a member. As a contract it is merely executory, becoming executed so as to establish the contemplated relation, whaetver that may be, only by acts of participation in the affairs of the association. It is therefore ordinarily up to that point revocable. Thus in *Fair Association* v *Greer*[59] the subscription was held unenforceable against a subscriber who thereafter stood aloof, unless it appear that it was distinctly given with a view to incorporation or that others became subscribers upon the faith of his subscription.[60] When, however, a liability to pay rests upon the subscriber the right of action, as intimated in *Hedge & Horn's Appeal*,[61] is at law and in the association, regarded, according to *Singing Society* v *Turn-Verein*,[62] as occupy-

[57] 22 Ohio St. 159.

[58] See *Phipps* v. *Jones*, 20 Pa. 260.

[59] 11 Pa. Super. Ct. 103.

[60] See *Academy* v. *Robinson*, 37 Pa. 310.

[61] P. 279.

[62] 163 Pa. 265, 268.

ing for this and other purposes a position intermediate between a corporation and a partnership.[63]

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[63] See this case, and *Blair Council* v. *M. F. B. Ass'n.*, 12 Pa. Super. Ct. 29, 32, and *Orbin* v. *Stevens*, 13 id. 591, 599, as to the form in which an action at law or in equity in behalf of the association may be properly brought. In *Fletcher* v. *Gawanese Tribe*, 9 Pa. Super. Ct. 393, it was held that assumpsit could not be maintained by a member against the society, *eo nomine*, or against all or some (representing themselves and others interested) of the members associated under the joint title. The association is described as, whilst not a partnership, yet "in the nature thereof;" a "quasi-partnership;" a "quasi-corporation," having, "still some of the features of a partnership;" and without a legal entity except "through and by " its members, —and the controversy as one between "quasi-partners;" *i. e.*, a case to which no common law process or judgment was adapted. It is interesting to compare with this decision those in *Hamill* v. *Supreme Council*, 152 Pa, 537; *Dickinson* v. *Ancient Order, etc.*, 159, id. 258; *Blair Council* v. *M. F. B. Ass'n.* 12 Pa. Super. Ct. in all of which judgments in just such proceedings were affirmed. In some of the states the practice has been settled by statute. In Pennsylvania it may be true that *adhuc sub judice lis est*. Of course, no difficulty of this sort can arise where an outside party seeks to hold certain designated members on the ground of direct contract, agency or ratification.